



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,866	12/12/2001	Michael Hinnebusch	Hinne-P3-01	4714

28710 7590 09/22/2004

PETER K. TRZYNA, ESQ.
P O BOX 7131
CHICAGO, IL 60680

EXAMINER

NELSON, FREDA ANN

ART UNIT	PAPER NUMBER
----------	--------------

3629

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/015,866

Applicant(s)

HINNEBUSCH, MICHAEL

Examiner

Freda Nelson

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/12/01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3629

DETAILED ACTION

This is in response to a letter for a patent filed December 12, 2001 in which claims 1-75 were presented for examination. Claims 1-75 are currently pending.

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because it contains legal phraseology such as "said. Furthermore, in the abstract in line 12, "includes" should be changed to include--.

Correction is required. See MPEP § 608.01(b).

Specification

3. The disclosure is objected to because of the following informalities:

Page 2, line 4, "09/977,577" should be changed to 09/977,557—

Page 3, line 9, "a" should be deleted.

Appropriate correction is required.

4. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 56-78 has been renumbered 52-75.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 11, 24, 37 and 62 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
6. In claim 11, line 1, it is understood that the applicant intended to recite 10 as the

independent claim.

7. In claim 24, line 1, it is understood that the applicant intended to recite 23 as the independent claim.

8. In claim 37, line 1, it is understood that the applicant intended to recite 36 as the independent claim.

9. In claim 62, line 1, it is understood that the applicant intended to recite 61 as the independent claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-3, 5-11, 14-55, and 57-75 are rejected under 35 U.S.C. 102(b) as being anticipated by Watterson et al. (Patent Number 6,458,060).

11. In claims 1, 3, 9-11, 40, 60 and 67, Watterson et al. discloses a system and method for providing improved exercise devises in combination with other users, and/or a live or stored trainer via a communications network (col. 1, lines 18-21). Watterson et

Art Unit: 3629

al. discloses that it is possible for a user to exercise on a device, such as a treadmill, while a trainer receives data regarding the operating parameters of the treadmill, such as, speed, inclination, etc.; and upon receiving this data, the trainer can modify the operating parameters of the user's treadmill such that the user achieves a program designed by the trainer (col. 3, lines 50-57). Watterson et al. further discloses that by activating the iFit.com button 82 a signal is transmitted to communication system 18 to create a connection thereby allowing treadmill 12 to receive signals representative of exercise programming from communication system 18. The connection with communication 18 enables the user to obtain the services of a stored trainer or a personal trainer to perform programming, ask questions, download or access programming materials, surf the web, gather and send e-mails, listen to audio programming, view video programming, review and update user information and statistics, purchase exercise programming, equipment, and materials, update exercise device software and operating parameters, research exercise materials, and the like (col. 10, lines 17-31 and FIG. 6). Watterson et al. is silent about storing routines by making an addition to a library of routines, however, it would have been obvious to one of ordinary skill in the art at the time the invention was made that the storing of additional routines in a library was an old and well-known type of data storage in the computer art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the exercise device of Watterson et al. to include the library so users could access and store exercise routines.

12. In claims 2 and 65-66, Watterson et al. discloses that the iFit.com button 82 acts as both a selector and indicator of connectivity of treadmill 12 to communication system 18, and optionally treadmill 20, whether such connectivity is via translator device 13, computer 14, or directly from treadmill 12 (col. 9, lines 41-46 and FIG. 6). Watterson et al. is silent about entering an indicator to find a gym to carry out the step of engaging, however, it would be obvious to one of ordinary skill in the art at the time the invention was made that if a user is inside a gym, the user would have to do this to this to find available exercise equipment.

13. In claims 5-6, 15-6, 18-9, and 62, Watterson et al. discloses that login-registration module 302 may gather user's name, age, sex, type of exercise equipment being used, and various other data unique to the user. Login-registration module 302 may present the user with multiple questions to obtain statistical information regarding the user's background, education, work experience, income, hobbies and other related information to aid operators of communication module 254 and system 250 in providing greater instructional information to the user (col. 35, lines 51-61). Watterson et al. further discloses that a in formation is gathered from the user, payment information, such as credit card numbers, accounts and the like may be obtained from the user. (col. 35 lines 62-64). Watterson et al. further discloses that communication module 254 may optionally include a consumer purchase module 310 which enables a user to make purchases online (col.38, lines 48-60 and FIG. 12).

14. In claims 7, 48-49, Watterson et al. discloses that in the event that only audio program session is desired, the user initially selects the type of equipment that the

Art Unit: 3629

program is to be used, such as, but not limited to treadmills, cycles, steppers, hikers, climbers, Nordic style devices, ellipticals, and the like (col. 44, lines 19-23, FIGS. 14 and 19). Watterson et al. discloses an exercise system that enables a user to access exercise equipment and equipment from a variety of locations (col. 2, lines 51-53). Watterson et al. is silent about programming a cardiovascular exercise as the exercise routine on a personal computer and communicating signals corresponding to the exercise routine over the network to said exercise machine, however, it is inherent that if the exercise equipment is cardiovascular exercise equipment, such as, a treadmill, then the exercise routine programmed into the treadmill would be a cardiovascular exercise routine.

15. In claims 8, 20-30, 46-47 and 68-69 Watterson et al. discloses that by activating the iFit.com button 82 a user can perform programming, download or access programming materials, surf the web, gather and send e-mails, review and update user information and make purchases (col. 10, lines 17-31 and FIG. 6). Watterson discloses that activation of the communication system 18 enables exercise devices to have the potential of being controlled during an exercise program by a third party. (col. 10, lines 32-39 and FIG. 6). Watterson et al. discloses that in one embodiment, as a third party controls the operation of the exercise devices, the trainer can communicate motivational messages to the trainee users. Watterson et al. further discloses that each user and/ or trainer may save unique exercise programs created by the user and/or trainer within data storage 390 accessible by mailbox module 386 (col. 39, lines 43-45 and FIG. 16). Watterson et al. is silent about setting a filter for web subject matter or content in the

profile, however, it would have been obvious to one of ordinary skill in the art at the time the invention was made that a web filter was an old and well-known type of content controller in the computer art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the exercise device of Watterson et al. to include the web filter to control web subject matter and content the users has access to.

16. In claims 14, 63-64, and 72 -75, the fact of inputting a gym membership, gym location and gym membership identification number, accepting a gym registration application over the internet and managing gym membership (including tracking fees of gym users and issuing invoices) in nonfunctional descriptive matter. It is not functional interrelated with the useful acts of the claimed invention and thus will not serve as limitation. The steps of accessing and engaging the machine-readable instructions to control the exercise machine in carrying out the personal exercise routine would be performed the same regardless of whether the equipment is in a gym or a home. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401,404 (Fed Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

17. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the gym membership limitations because such data does not functionally relate to the steps in the method claimed and does not patentably distinguish the claimed invention.

18. In claims 31 and 43, Watterson et al. discloses that control panel 22 includes multiple video output devices 94. The Video output device may allow a user to watch various types of entertainment and/or surf the internet, while receiving images representative of the exercise profile that they are following whether, periodically, upon activation of a user control, or the like (col.13, lines 18-27). Watterson et al. further discloses that control panel 22 includes an audio output device 96, such as a hardwired and wireless speakers col.13, lines 28-40).

19. In claims 32 –33, Watterson et al. discloses that control panel 22 may include an integrally formed mouse 100, a keyboard jack 102 for an external keyboard 103, a controller port 104 for receiving one of a variety of games controllers, an integrally formed mouse 100, a touch sensitive video display, and various other ports, jacks, or the like to receive various other external components (col.12, lines 31- 40).

20. In claims 34, 37, 41-42, 44, 57, and 59 Watterson et al. discloses that if the individual wishes to view the exercise program profile, communication module 254 packetizes an audio and/or visual graphical representation of the exercise program selected (i.e., the maximum speed, maximum incline, time to perform the exercise program, amount of time at each maximum speed and incline, and various other operating parameters known to one skilled in the art) and transmits the data to either the integrally formed video output device 92 (col. 37, lines 33 – 44; FIGS 1 and 6). Watterson et al. further discloses that the exercise profile of the intensity of various exercise criteria is displayed continually or periodically to the user during the performance of the programming (col. 7, lines 33-37). Watterson et

Art Unit: 3629

al. does not disclose the step of formatting output at a display device at exercise equipment to produce a larger than usual display so as to be easily viewable by the user while exercising, however, it would have been obvious to one of ordinary skill in the art at the time the invention was made that a larger than usual display was an old and well-known type of display in the computer art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the display of Watterson et al. as a larger than usual display so that users could have a better view of the program profile.

21. In claims 35-36, Watterson et al. discloses that Interface 190 is configured to transceive audio and visual signals of the user exercising, data and information about the user such as, heart rate, blood pressure, and the like that has been gathered by one or more health monitoring devices (col. 18, line 64 to col. 19, lines 1-4 and FIG. 8).

22. In claims 38-39, 58, Watterson et al. discloses that scheduling module 380 enables various individuals to schedule times to talk to and optionally perform a live workout program. Scheduling module 380 communicates with a calendaring module 384 that list the days of the month and the particular times available for one-on-one exercise programs with each trainer (col. 39, lines 12 -27 and FIG. 16).

23. In claim 45, Watterson et al. discloses that during operation of treadmill 12 a user initially inserts a dead-man key (not shown) within port 98 of control panel 22 (FIG. 6) and upon insertion of the dead-man key, treadmill 12 is capable of being operated, i.e., power is allowed to flow to the various internal and external

components of treadmill 12 and treadmill 12 has an active status. Once activated, a user may optionally connect to communication system 18 or use a stored or manually defined exercise program or workout (col.25, lines 37-46)

24. In claims 50 and 61, Watterson et al. discloses that login registration module 302 assists the user in defining a login user identification number and password that are unique to the particular user. Watterson discloses that following the logging in procedure, the user is given access (col. 36, lines 9-33).

25. In claim 51, Watterson et al. discloses that the iFit.com button 82 acts as both a selector and indicator of connectivity of treadmill 12 to communication system 18 and optionally treadmill 20, whether such connectivity is via translator device 13, computer 14, or directly from treadmill 12 (col. 9, lines 41-46 and FIG. 6). Watterson et al. further discloses, that alternatively, consumer purchase module 310 may include a database, whether relational, hierarchal, or the like that has stored specifications, pricing guides, illustrative images of exercise devices and products, and the like, that a user may search through to find the necessary or desired exercise equipment. Additionally, consumer purchase module 310 may include the necessary hardware and/or software modules to gather and store billing and purchase information from the user or alternatively, consumer purchase module 310 may communicate with a centralized accounting module that performs the necessary functions typically known by one skilled in the art related to accounting, billing, purchasing, sales, and the like activities (col. 38, lines 55-67).

26. In claims 54-55, Watterson et al. discloses that in one alternate embodiment,

calendaring module 384 is linked with private room 394 such that upon scheduling a one-on-one exercise program, a private room is automatically scheduled for the user. Additionally, calendaring module 384 may automatically send a message to the users mailbox, thereby providing the user with information regarding the particular private room scheduled and a reminder of the schedule time (col. 40, lines 9-16).

27. In claims 52-53 and 70-71, Watterson et al. discloses that following the logging in procedure, the user is given access, as depicted by block 340, to communication module 254 to the specific level that they are allowed, based upon their responses to the various questions asked during the login procedure. For example, if a user defines the exercise device as a treadmill located at home, the user may be limited to only the treadmill related web pages of iFit.com website 300. Similarly, if a user does not define any account information the user may be limited to only the free web pages and information available thereon, while being restricted to access the fee-based web pages, such as to purchase exercise profiles, exercise equipment, and the like (col.6, lines 22-28).

Claim Rejections - 35 USC § 103

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watterson et al. in view of Clem (Patent Number 6,527,674).

28. In claim 4, Watterson et al. discloses that the step of storing the personal exercise routine includes a charge card number so. Watterson et al. does not disclose

Art Unit: 3629

that the step of storing the personal exercise routine to includes medical information.

Clem discloses that the first plurality of information, may include, for example, a set of fitness goals for the user, at least one parameter (age, weight, sex, height, and medical conditions of the user) and includes all information entered by the user. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of Watterson et al. to include the medical condition parameter of Clem to create a more personalized exercise routine for the user.

Claims 12-13 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watterson et al. in view of Clem in further view of Mahoney et al. (Patent Number 5,502,806).

29. In claims 12-13, 56, and 60 Watterson et al. discloses that login registration module 302 assists the user in defining a login user identification number and password that are unique to the particular user. Watterson et al. discloses that following the logging in procedure, the user is given access (col. 36, lines 9-33). Watterson et al. does not disclose swiping a credit card or smart card for access to the exercise equipment. Mahoney et al. is silent about using that the waiting line management system on exercise equipment. However, exercise equipment could be considered within the scope of this invention because Mahoney et al. discloses that the invention can be applied in any situation where the current demand for the delivery of a service or admission to a facility exceeds the current capacity. It would have been obvious to modify the exercise equipment of Watterson et al. to include the system of Mahoney et al. to provide faster access to the personalized exercise routine and also because the

Art Unit: 3629

problem solved by Mahoney et al., waiting line management, would work the same on exercise equipment as theme park rides.

Conclusion

30. The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure.

U.S. Patent No. 5,702,323 to Pouton

U.S. Patent No. 5,720,619 to Fisslinger

U.S. Patent No. 5,836,770 to Powers

U.S. Patent No. 5,904,484 to Burns

U.S. Patent No. 5,947,868 to Dugan

U.S. Patent No. 5,957,699 to Peterson et al.

U.S. Patent No. 6,059,692 to Hickman

"UltraCoach HRM"

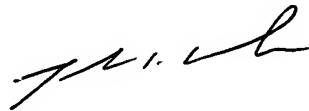
"PC Coach Elite"

31. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda Nelson whose telephone number is (703) 305-0261. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (703) 308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Freda Nelson
Examiner
Art Unit 3629



JOHN G. WEISS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600